



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,094	04/09/2001	Holger Eggers	MO-6283/WW-5	2976

7590

09/10/2003

NORRIS MCLAUGHLIN & MARCUS, P.A.  
220 EAST 42ND STREE  
30TH FLOOR  
NEW YORK, NY 10017

EXAMINER

BISSETT, MELANIE D

ART UNIT	PAPER NUMBER
----------	--------------

1731

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/807,094	<b>Applicant(s)</b> EGGERS ET AL.	
	<b>Examiner</b> Melanie D. Bissett	<b>Art Unit</b> 1711	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 and 11 is/are allowed.
- 6) ☒ Claim(s) 9 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The amendment after-final has been entered, and the finality of the rejection has been withdrawn based on the new rejections presented below.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on 8/8/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application No. 09/807,294 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 9 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 9 recites the limitation "conventional additives and also, optionally, one or more EVOH-containing layers, one or more heat-sealable coatings and also one or more coupling layers" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 12 recites a method of using the multilayer film of claim 1 for packaging foodstuffs. However, the claim does not recite specific steps involved in packaging

Art Unit: 1711

foodstuffs. Thus, it is unclear how the multilayer film of claim 1 is involved in packaging foodstuffs. It is suggested that the claim be amended to "A method of using the multilayer film of claim 1 comprising packaging foodstuffs with the multilayer film."

***Further Suggestions for the Claims***

7. Note that claim 4, as amended, recites "particles that have have an aspect ratio...." It is suggested that the redundant word "have" be deleted.

***Allowable Subject Matter***

8. Claims 1-8 and 10-11 are allowed.

9. Claims 9 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter:

11. The closest prior art, Ramesh (US 6,346,285 B1), teaches articles having polyamide and EVOH layers. However, the reference does not teach the use of polyamide 6 as a polyamide for forming the outer layer. By requiring the polyamide of the outer layer to have a melting point between 250 and 400 °F, Ramesh teaches away from the use of polyamide 6 in the outer layer, since polyamide 6 has a melting point of about 225 °C (437 °F). See Khanna et al., col. 7, lines 56-59. Therefore, it is the

Art Unit: 1711

examiner's position that the applicant's claimed multilayer film, having an outer polyamide 6 layer, provides a novel and unobvious step over the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie D. Bissett whose telephone number is (703) 308-6539. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

mdb



James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700